

REMARKS

Claims 1-40 are pending in this application and were examined in the non-final office action mailed January 19, 2007. Claims 20-40 were allowed, and claims 4, 5, 8 and 10-18 were objected to but indicated to be allowable if rewritten in independent form incorporating the base claim and any intervening claims. In this response, claims 41-55 have been added.

Reconsideration of the present application including claims 1-55 is respectfully requested.

Claims 1-3, 6, 7, 9 and 19 were rejected as being anticipated by U.S. Patent No. 3,486,505 to Morrison. The Office Action asserts that Morrison discloses the "guide members include a planar surface and define an elongated slot 13 opening therebetween." Morrison discloses that "arms 11 define a channel 13 into which the bone graft C may be placed, with the tips 12 in contact with one another, as shown in FIG. 1." See col. 2, lines 18-20. There is no disclosure that channel 13 extends through either of the arms 11, or that channel 13 extends between an outer surface and a guide surface of either of the arms 11.

In contrast to Morrison, claim 1 recites, among other features, "each of said pair of guide members including a body with an outer surface and an opposite guide surface and an elongated slot opening therebetween...." Since Morrison fails to disclose that each of the arms 11 includes an outer surface and an opposite guide surface and an elongated slot opening therebetween, it cannot anticipate claim 1 and withdrawal of the rejection of claim 1 is respectfully requested.

Furthermore, claim 1 recites "a central body and a pair of opposite wings extending therefrom, each wing being slidingly received in said slot of a corresponding one of said pair of guide members...." Morrison discloses sliding block 14 between arms 11. However, sliding block 14 does not include any structure extending through any slot of the arms 11. The Office Action refers to Fig. 5 and asserts that the wide lateral portions are wings. However, Morrison discloses that the wide lateral portions, presumed to be elements 16, are lateral guides "on opposite sides of the supporting frame, and have been shown as being welded to the lowermost arms. The guides hold the bone graft between arms 11 as it is advanced and acts as "a protective retractor to adjacent soft tissues of an incision made in the patient to reach and expose the vertebral bodies A." The lateral guides also engage the vertebral bodies to limit insertion of the tips to protect the spinal cord. See col. 2, lines 40-51. Thus, the lateral guides in Morrison are

not wings extending from sliding block 14, and further are not slidably received in any slot of the arms 11. Therefore, Morrison cannot anticipate claim 1 for this additional reason.

Claims 2-3, 6, 7, 9 and 19 depend directly or indirectly from claim 1 and are allowable at least for the reasons claim 1 is allowable. Withdrawal of the rejection of these claims is respectfully requested.

New claims 41-54 have been added. Claim 41 is an independent claim and recites "a housing; a pair of opposing guide members extending distally from said housing, said pair of guide members each including a body with an outer surface and an opposite inner surface facing the inner surface of the other guide member with the implant being positionable between said inner surfaces, said guide members further each including an elongated slot extending between and opening along said inner surface and said outer surface of said guide member; a central body between said pair of guide members, said central body including opposite wings extending therefrom slidably received in respective ones of said slots of said guide members; and a drive member extending from said central body that is operable to forwardly advance said central body and the implant positioned between said guide member toward distal ends of said guide members." Claim 41 finds support in the original claims and throughout the specification and drawings, and is not disclosed or suggested by the cited references. Claims 42-53 depend directly or indirectly from claim 41 and are also allowable.

Claim 54 is an independent claim and recites "a housing; a pair of opposing guide members extending distally from said housing, said pair of guide members each including an elongate body with an outer surface and an opposite inner surface facing the inner surface of the other guide member, said guide members further each including an elongated slot extending between and opening along said inner surface and said outer surface thereof with the implant being positionable between said guide surfaces, each of said guide members further including an abutment member adjacent a distal end thereof with said slot of said guide member extending through said abutment member, said abutment members being positionable in contact with the adjacent bony portions; a central body between said pair of guide members, said central body including opposite wings extending therefrom slidably received in respective ones of said slots of said guide members; and a drive member extending proximally from said central body through said housing, said drive member being operable to advance said central body and the implant between said guide members toward said distal ends of said guide members." Claim 54

finds support in the original claims and through the specification and drawings, and is allowable since it is not disclosed or suggested in the cited references. Claim 55 depends from claim 54 and is also allowable.

The present application is believed to be in condition for allowance. Reconsideration and allowance of the present application including claims 1-55 is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with respect to the present application.

Respectfully submitted:

By: Douglas A. Collier
Douglas A. Collier
Reg. No. 43,556
Krieg DeVault LLP
2800 One Indiana Square
Indianapolis, Indiana 46204-2079
Phone: (317) 636-4341

KD_IM-946301_1

First Office Action Response
USSN 10/764,621
MSDI-292/PC1008.00
Page 13 of 13